

1 Robert David Baker, Esq. (87314)
2 ROBERT DAVID BAKER, INC.
3 80 South White Road
4 San Jose, CA 95127
5 (408) 251-3400 telephone
6 (408) 251-3401 facsimile
7 rbaker@rdblaw.net
8 Attorney for Plaintiffs
9 RODOLFO SOLORIZANO; JOSE VELEZ;
10 ADOLFO BOJORQUEZ, on behalf of themselves
11 and those similarly situated individuals,

12 Thomas Margain (193555)
13 Huy Tran (288196)
14 Justice at Work Law Group
15 84 West Santa Clara Street, Suite 790
16 San Jose, CA 95113
17 Telephone: (408) 317-1100
18 Facsimile: (408) 351-0105
19 Tomas@JAWLawGroup.com
20 Huy@JAWLawGroup.com
21 Attorney for Defendants
22 ANTONIO AGUILAR and MARISELA AGUILAR

23 Angela J. Rafoth (241966)
24 arafoth@littler.com
25 Michael J. Hui (273212)
mhui@littler.com
26 LITTLER MENDELSON, P.C.
333 Bush Street
34th Floor
27 San Francisco, California 94104
Telephone: (415) 433-1940
Facsimile: (415) 399-8490
28 Attorneys for Defendant
AVIS RENT A CAR SYSTEM, LLC

29 Reed L. Russell (Fla 0184860)
30 admitted pro hac vice
reed.russell@phelps.com
31 Jolee Land (240940)
Jolee.land@phelps.com
32 PHELPS DUNBAR, LLP
100 Ashley Drive, Suite 1900
33 Tampa, Florida 33602
Telephone: (813) 472-7550
Facsimile: (813) 472-7570

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36
37
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1 Thomas P. Klein (148585)
2 tklein@sbcglobal.net
3 TKLEIN ASSOCIATES, INC.
4 One Kaiser Plaza, Suite 350
5 Oakland, CA 94612
6 Telephone: (510) 268-0020
7 Facsimile: (510) 268-0022
8 Attorneys for Defendant
9 THE HERTZ CORPORATION

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODOLFO SOLORZANO; JOSE VELEZ;
ADOLFO BOJORQUEZ, and on behalf of
themselves and those similarly situated
individuals,

Plaintiffs,

vs.

MGA DRIVERS; ANTONIO AGUILAR;
MARISELA AGUILAR; AVIS RENT A
CAR SYSTEM, LLC; THE HERTZ
CORPORATION,

Defendants.

Case No. 5:16-cv-01529-EJD

NOTICE OF MOTION AND JOINT MOTION
FOR APPROVAL OF FLSA INDIVIDUAL
SETTLEMENTS AND RELEASE OF
CLAIMS AND DISMISSAL WITH
PREJUDICE

Date: TBD

Time: TBD

Judge: Hon. Edward J. Davila

Dept: Courtroom No. 4, 5th Floor

TO: HONORABLE EDWARD J. DAVILA:

PLEASE TAKE NOTICE that at a date and time set by the court, if necessary, Plaintiffs
Rodolfo Solorzano, Jose Velez, and Adolfo Bojorquez (“Named Plaintiffs”) and Defendants
Antonio Aguilar, Marisela Aguilar dba MGA Drivers (“collectively, “MGA Drivers”), Avis Rent
A Car System, LLC, The Hertz Corporation (collectively, “Defendants”), jointly move this Court

for approval of the individual settlement agreements in this action (the “Agreement”) between the Named Plaintiffs and Defendants and entry of an order of dismissal with prejudice of Named Plaintiffs’ claims, including those under the Fair Labor Standards Act.¹ Plaintiffs and Defendants (collectively, the “Parties”) have agreed that the terms reflected in the Agreement are mutually satisfactory and represent a fair and reasonable compromise of the claims asserted in this matter. The Court’s approval of the settlement will consummate the Agreement between the Parties. The grounds for this joint motion are set forth in the following memorandum of law and supporting declarations.

This motion is based upon this Joint Motion and Notice of Motion, the following Point and Authorities, the Declaration of Robert David Baker, and on the individual settlement agreements in this matter to be provided to the court for *in camera* review as directed by the court, and all other documents and records on file in the above-entitled matter.

Dated: January 25, 2018

Dated: January 25, 2018

/S/
Robert David Baker, Esq.
Attorney for Plaintiffs
Rodolfo Solorzano, Jose Velez
and Adolfo Bojorquez

/S/
Thomas Margain
Attorney for Defendants Antonio Aguilar
and Marisela Aguilar

Dated: January 25, 2018

Dated: January 25, 2018

/S/
Angela Rafoth
Attorney for Defendant
Avis Rent A Car System, LLC

/S/
Reed L. Russell
Attorney for Defendants
The Hertz Corporation

¹ Contemporaneously with this motion, the Parties have filed a “Joint Motion to Submit Settlement Agreement to the Court for In Camera Review,” in which the Parties request that the Court review the settlement agreements entered into by Plaintiffs with Defendants in this action in camera so that they may remain confidential without becoming public records in the court file.

MEMORANDUM OF LAW

A. BACKGROUND

1. Statement of the Case

On March 28, 2016, Plaintiffs Rodolfo Solorzano and Jose Velez filed this action against Defendants in which they allege, *inter alia*, that Defendants violated 29 U.S.C. 201, et seq. of the Fair Labor Standards Act (“FLSA”) by failing to pay Plaintiffs minimum wages and overtime during their employment with Defendants. Adolfo Bojorquez joined this action and filed the First Amended Complaint. Defendant Avis filed a Motion to Dismiss the First Amended Complaint under Rules 12(b)(5) and 12(b)(6), to which Defendant Hertz joined. *See* Dkt. 22, 25. The Court granted said motion and dismissed all claims with leave to amend. *See* Dkt. 45. On September 16, 2016, Plaintiffs filed a Second Amended Complaint, to which the Parties answered. *See* Dkt. 46.

On June 2, 2017, Named Plaintiffs filed a Notice of Non-Filing of Motion to Certify FLSA Collective Action based on a recent Department of Labor settlement that eliminated the need for and practicality of a collective action. *See* Dkt. 58. Thus, there are little to no Opt-In Plaintiffs.

2. Statement of Facts

Named Plaintiffs allege, on behalf of themselves and others similarly situated, who worked as drivers for Defendant MGA Drivers, that they were misclassified as independent contractors by Defendant MGA Drivers. Named Plaintiffs allege a joint employer relationship between Defendant MGA Drivers and Defendants Avis and Hertz. As a result, Named Plaintiffs claim that Defendants purported failure to pay overtime and minimum wage violated the FLSA. Further, in their individual capacities, Named Plaintiffs make claims under California law for

1 failure to pay overtime, failure to pay minimum wage, failure to provide meals and rest breaks
2 (including meal and rest break premiums), failure to pay final wages, and unfair competition.

3 Named Plaintiffs do not seek to certify a class under Rule 23 for the alleged violations of the
4 California Labor Code.

5 **3. Investigation and Discovery**

6 Counsel for the Parties have conducted thorough investigation into the facts of this
7 litigation, including review of relevant documents and interviews with relevant witnesses.
8 Further, the Parties have conducted sufficient discovery, including propounding and responding
9 to multiple sets of written discovery requests and taking the depositions of Named Plaintiffs over
10 the course of multiple days.

11 **4. Settlement and Negotiations**

12 The Parties attended a settlement conference on October 5, 2017, before the Honorable
13 Nathanael Cousins and eventually reached a settlement involving Named Plaintiffs and
14 Defendants. Named Plaintiffs and Defendants have resolved all the claims by Plaintiffs in this
15 action. The Parties now file this Joint Motion for Approval of the individual settlements, and
16 dismissal of their claims, including those brought under the FLSA, with prejudice.

17 **B. LEGAL PRINCIPLES**

18 Judicial review and approval of an FLSA settlement involving a compromise provides
19 final and binding effect. *Lynn's Food Stores, Inc. v. U.S. Dep't of Labor*, 679 F.2d 1350 (11th
20 Cir. 1982). As the Eleventh Circuit held in *Lynn's Food*,

21 [t]here are only two ways in which back wage claims arising under
22 the FLSA can be settled or compromised by employees. First,
23 under section 216(c), the Secretary of Labor is authorized to
24 supervise payment to employees of unpaid wages owed to them . . .
25 . . . The only other route for compromise of FLSA claims is
26 provided in the context of suits brought directly by employees

against their employer under section 216(b) to recover back wages for FLSA violations. *When employees bring a private action for back wages under the FLSA, and present to the district court a proposed settlement, the district court may enter a stipulated judgment after scrutinizing the settlement for fairness.*

Id. at 1352-53 (emphasis supplied).

Before approving an FLSA settlement, the court must scrutinize it to determine if it is “a fair and reasonable resolution of a bona fide dispute.” *Lynn*, 679 F.2d at 1354-55. In determining whether the proposed settlement is a fair and reasonable resolution of the claim, the District Court generally reviews the settlement using the factors adopted for reviewing the fairness of class action settlements generally. *Leverso v. SouthTrust Bank of Ala., Nat. Assoc.*, 18 F.3d 1527, 1531 n.6 (11th Cir. 1994). These factors include: (1) the existence of fraud or collusion; (2) the stage of the proceedings and the amount of discovery completed; (3) the complexity, expense and likely duration of the litigation; (4) the probability of plaintiff’s success on the merits; (5) the range of possible recovery; and (6) the opinions of counsel. *Id.* If the settlement reflects a reasonable compromise over issues that are actually in dispute, the Court may approve the settlement “in order to promote the policy of encouraging settlement of litigation.” *Lynn*, 679 F.2d at 1354. There is a “strong presumption” that an FLSA settlement reached as part of the settlement of a lawsuit is fair, reasonable and adequate under these factors. *Dail v. George A. Arab, Inc.*, 391 F. Supp. 2d 1142, 1146 (M.D. Fla. 2005) (in reviewing the settlement of a FLSA claim, “the Court should keep in mind the ‘strong presumption’ in favor of finding a settlement fair”).

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1 **C. THE SETTLEMENT IS FAIR AND REASONABLE**

2 **1. Settlement was Reached in an Adversarial Context.**

3 The settlement in the instant action occurred in adversarial context of a private lawsuit
4 before the Honorable Nathanael Cousins.
5

6 **2. There Are Issues of FLSA Coverage In Dispute.**

7 Named Plaintiffs allege Defendants improperly classified them as independent
8 contractors and violated federal law governing the payment of minimum wage and overtime.
9 However, Defendant MGA contends that Plaintiffs were properly classified, and even to the
10 extent they were not, no violation occurred. Defendants Avis and Hertz contend that no joint
11 employer relationship exists giving rise to liability and, in addition, no violation of law occurred.
12 Thus, there exists an actual dispute between the Parties whether the FLSA is a viable claim in
13 this Action.
14

15 **3. The Settlements Are Fair, Reasonable, and Adequate.**
16

17 The Parties have reached these individual settlements only after conducting thorough
18 discovery and non-collusive, arm's length negotiations. The Honorable Nathanael Cousins
19 conducted the settlement conference and facilitated the settlement negotiation. Further, the
20 settlements are fair and reasonable, given the settlement of the Department of Labor action
21 against MGA Drivers. Little to no Opt-In Plaintiffs remain as most have been "settled" out with
22 the Department of Labor settlement, which has effectively preempted any FLSA collective
23 action contemplated by this lawsuit. See *Baker Decl.* ¶ 7. Based on the foregoing, the Parties
24 acknowledge that conditional certification is inappropriate.
25

26 MGA Drivers, for all intents and purposes, is insolvent. *Baker Declaration* ¶ 8. With
27 respect to Avis Rent A Car System LLC and The Hertz Corporation, Named Plaintiffs
28

1 acknowledge the risk of pursuing the matter against those defendants and losing on a motion for
2 summary judgment, leaving an insolvent defendant, makes settlement with Avis Rent A Car
3 System LLC and The Hertz Corporation reasonable at this time given the difficulty of proving
4 “joint liability.”

5 There has been no collusion with the Named Plaintiffs or their counsel with those
6 similarly situated that would prejudice any potential opt-in member of the FLSA collective
7 action. Lack of adequate notice to the potential class members is not an issue because this is an
8 opt-in collective action at the pre-certification stage, and any potential class members that have
9 not settled under the Department of Labor settlement are still free to proceed against MGA
10 Drivers, Avis Rent A Car System LLC, or The Hertz Corporation. Finally, there have been no
11 communications between the Named Plaintiffs or their counsel and any potential class member
12 that would cause those class members to rely on joining in the instant action.

13 **CONCLUSION**

14 For the foregoing reasons, the Parties request that the Court approve the proposed
15 Agreement and enter an Order dismissing this action with prejudice.

16 //

17 //

18 Respectfully submitted,

19 Dated: January 25, 2018

20 Dated: January 25, 2018

21 /S/
22 Robert David Baker, Esq.
23 Attorney for Plaintiffs
24 Rodolfo Solorzano, Jose Velez
25 and Adolfo Bojorquez

26 /S/
27 Thomas Margain
28 Attorney for Defendants Antonio Aguilar
and Marisela Aguilar

Dated: January 25, 2018

Dated: January 25, 2018

/S/
Angela Rafoth
Attorney for Defendant
Avis Rent A Car System, LLC

/S/
Reed L. Russell
Attorney for Defendants
The Hertz Corporation

ATTESTATION

Attestation – Local Rule 5-1(i)(3)

I, ROBERT DAVID BAKER, attest pursuant to Northern District Local Rule 5-1(i)(3) that all other signatures to this document, on whose behalf this filing is submitted, concur in the filing's content and have authorized this filing. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 25, 2018

/S/